

## 32.004

provided for purchases made under the authority of part 13.

[60 FR 49710, Sept. 26, 1995]

### 32.004 Contract performance in foreign countries.

The enforceability of contract provisions for security of Government financing in a foreign jurisdiction is dependent upon local law and procedure. Prior to providing contract financing where foreign jurisdictions may become involved, the contracting officer shall ensure the Government's security is enforceable. This may require the provision of additional or different security than that normally provided for in the standard contract clauses.

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### 32.005 Consideration for contract financing.

(a) *Requirement.* When a contract financing clause is included at the inception of a contract, there shall be no separate consideration for the contract financing clause. The value of the contract financing to the contractor is expected to be reflected in either

(1) A bid or negotiated price that will be lower than such price would have been in the absence of the contract financing, or

(2) Contract terms and conditions, other than price, that are more beneficial to the Government than they would have been in the absence of the contract financing. Adequate new consideration is required for changes to, or the addition of, contract financing after award.

(b) *Amount of new consideration.* The contractor may provide new consideration by monetary or nonmonetary means, provided the value is adequate. The fair and reasonable consideration should approximate the amount by which the price would have been less had the contract financing terms been contained in the initial contract. In the absence of definite information on this point, the contracting officer should apply the following criteria in evaluating whether the proposed new consideration is adequate:

(1) The value to the contractor of the anticipated amount and duration of the contract financing at the imputed fi-

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ancial costs of the equivalent working capital.

(2) The estimated profit rate to be earned through contract performance.

(c) *Interest.* Except as provided in subpart 32.4, Advance Payments for Non-Commercial Items, the contract shall not provide for any other type of specific charges, such as interest, for contract financing.

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### 32.006 Reduction or suspension of contract payments upon finding of fraud.

#### 32.006-1 General.

(a) Under Title 10 of the United States Code, the statutory authority implemented by this section is available only to the Department of Defense; this statutory authority is not available to the National Aeronautics and Space Administration or the United States Coast Guard. Under the Federal Property and Administrative Services Act (41 U.S.C. 255), this statutory authority is available to all agencies subject to that Act.

(b) 10 U.S.C. 2307(h)(2) and 41 U.S.C. 255, as amended by the Federal Acquisition Streamlining Act of 1994, Public Law 103-355, provide for a reduction or suspension of further payments to a contractor when the agency head determines there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. This authority does not apply to commercial interim payments under subpart 32.2, or performance-based payments under subpart 32.10.

(c) The agency head may not delegate his or her responsibilities under these statutes below Level IV of the Executive Schedule.

(d) Authority to reduce or suspend payments under these statutes is in addition to other Government rights, remedies, and procedures.

(e) In accordance with these statutes, agency head determinations and decisions under this section may be made for an individual contract or any group of contracts affected by the fraud.

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